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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-74

RONSON CORPORATION,

Petitioner,

against

LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., KUHN LOEB & Co., D. F. KING & Co., INC., FRANKLIN NATIONAL BANK, FRANKLIN NEW YORK CORPORATION, SERVIZIO ITALIA OF BANCA NAZIONALE DEL LAVORO, PHILIP MARFUGGI, RAFFAELE URSINI, and MICHELE SINDONA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENTS LIQUIFIN AKTIENGESELLSCHAFT, LIQUIGAS S.p.A., D. F. KING & CO., INC., SERVIZIO ITALIA S.F.p.A., PHILIP MARFUGGI, RAFFAELE URSINI, and MICHELE SINDONA

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Respondents Liquifin Aktiengesellschaft ("Liquifin"), Liquigas S.p.A., D. F. King & Co., Inc., Servizio Italia S.F.p.A., Philip Marfuggi, Raffaele Ursini and Michele Sindona submit the following brief in opposition to Ronson Corporation's ("Ronson") Petition for Certiorari.

Counterstatement of the Case

This suit was brought by Ronson to block Liquifin's cash tender offer for a majority of Ronson's outstanding common stock. Among other things, Ronson asserted in its complaint that the tender offer violated the Williams Act, the antitrust laws, various federal regulatory statutes, and the common law applicable to fiduciary duties of shareholders. During the course of the litigation, Ronson abandoned most of the claims in its multiparagraph grab-bag complaint and now focuses solely on its Williams Act claim.

After two full rounds of discovery, encompassing thousands of pages of depositions and hundreds of documents, and after a full trial on the merits, the United States District Court, in a detailed and well reasoned opinion, rejected all of Ronson's claims, including its Williams Act claim, expressly finding that:

> "The preponderance of the evidence shows that the Restatement of the tender offer fully informs the Ronson stockholders of the material facts without omission or misrepresentation." (Pet.App. D p. 77)

The District Court accordingly permitted Liquifin to proceed with its tender offer under a Restated Offer to Purchase expressly approved by the Court in its order of January 16, 1974.

As to the one "issue" that Ronson now points to in its Petition—Ronson's claim that Dr. Raffaele Ursini does not control Liquigas S.p.A., Liquifin's parent company—the District Court, after analyzing the proof, specifically found that

> "[t]he record in this case inevitably leads to the conclusion that only defendant Ursini controls Liquigas." (Pet. App. D p. 62)

Immediately after the District Court's decision, Ronson applied for a stay pending appeal, which both the Third Circuit and Mr. Justice Brennan denied. The judgment of the District Court was then unanimously affirmed by the Court of Appeals for the Third Circuit. *Ronson Corp.* v. *Liquifin A.G.*, 370 F. Supp. 597 (D.N.J.), *aff'd*, 493 F.2d 1401 (3d Cir. 1974). (Pet.App. E pp. 79-82) and Ronson's petition for rehearing *en banc* by said Court of Appeals was denied on May 7, 1974. (Pet.App. F pp. 83-84)

Thereafter, Liquifin's tender offer for Ronson shares was completed in May 1974, at which time Liquifin had purchased and paid for approximately 36% of the outstanding common shares of Ronson, pursuant to the published Restated Offer to Purchase as specifically approved by the District Court after trial.

Without citing any specific respects in which it contends that the Liquifin Restated Offer to Purchase was false, incomplete or misleading, Ronson now asks this Court to set aside the tender offer on the basis of certain allegedly erroneous findings of fact and discretionary discovery rulings made by the District Court. We submit that, far from raising the kind of serious and substantial issues of law and policy calling for review by this Court, the Ronson petition raises no issues of law whatever. This Court should not be called upon to review routine factual findings and normal pre-trial discovery rulings of the District Court, which have already been carefully reviewed by the Court of Appeals and unanimously found to be without error. (Pet.App. E pp. 81-82)

Certiorari Should Not Be Granted

1. This Case Turns On Questions Of Fact, Not Questions of Law

A careful reading of Ronson's Petition reveals that, despite its protestations concerning Williams Act violations, it has not pointed to any purportedly inadequate disclosures in Respondents' final, court-approved tender offer materials. The closest that Ronson comes to enumerating such an issue is its footnote statement that "[t]he source of Ursini's funds remains a mystery." (Pet. p. 10 n.*)*

Obviously, however, the only relevance of this point is its bearing on the question of who controls Liquigas S.p.A., Liquifin's parent. But the district court specifically, and correctly, held that "the record as a whole has not established Ronson's suspicions and theories as provable facts. The preponderance of the evidence clearly demonstrates that defendant Ursini controls Liquigas." (Pet.App. D p. 64)

Consequently, Ronson's rhetoric notwithstanding, it is clear that the issues Ronson seeks to raise are issues of fact, not law. Factual findings cannot be set aside unless they are clearly erroneous, Fed. R. Civ. P. 52(a), and issues of that type certainly do not merit this Court's attention, especially when a Court of Appeals has unanimously upheld those findings.

2. Ronson's Discovery Challenges are Addressed to Discretionary Rulings, Not Substantial Legal Issues

One of Ronson's chief arguments is that it was not allowed all the discovery it requested. (Pet. pp. 9-10) But Ronson fails to show how it was purportedly injured by

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* Unsubstantiated statements with similar implications appear at pages 4-5 of the Petition.

any of the District Court's discovery rulings, and the fact of the matter is that Ronson was granted exhaustive discovery in this case.

The district courts are vested with broad discretion to direct the course of discovery, and their discovery rulings should not be set aside unless they constitute an abuse of discretion and adversely affect a substantial right of one of the parties. *See, e.g., Swanner* v. *United States*, 406 F.2d 716, 719 (5th Cir. 1969); *Tiedman* v. *American Pigment Corp.*, 253 F.2d 803, 808 (4th Cir. 1958); *Dolgow* v. *Anderson*, 53 F.R.D. 661, 664 (E.D.N.Y. 1971); *New Dyckman Theatre Corp.* v. *Radio-Keith-Orpheum Corp.*, 20 F.R.D. 36, 37 (S.D.N.Y. 1955). *See generally* 8 C. WRIGHT & A. MILLER, FEDERAL PRACTICE & PROCEDURE § 2006, at 34-35 (1970).

The discovery questions in this case were properly decided and involved purely routine denials of "repeat" discovery requests and denials of over-broad discovery requests which Ronson was afforded an opportunity to but failed to justify to the District Court. These discovery rulings were reviewed on appeal, and the Third Circuit, while acknowledging that "broad discovery must be granted in this type of case", expressly ruled that:

> "Our review of the district court's rulings in meeting these situations here does not disclose error." (Pet. App.E p. 82)

Accordingly, Ronson's claims on discovery rulings do not present significant issues meriting review by this Court.

3. This Case Does Not Present An Issue of Burden of Proof

Ronson's argument that this case turned on a misapplication by the District Court of the burden of proof rules is completely without foundation. As to every factual issue

in the case, the District Court specifically found that the preponderance of the evidence supported Liquifin's position. For example, the Court found that:

> "Testimony at trial, extensive depositions and production of documents demonstrate that the funds for this tender offer were in fact provided through the Liquimportex to Capitalfin sale of Liquipar stock." (Pet.App.D p. 60)
>
> * * * *
>
> "The record in this case inevitably leads to the conclusion that only defendant Ursini controls Liquigas." (Pet.App.D p. 62)
>
> * * * *
>
> "The preponderance of the evidence clearly demonstrates that defendant Ursini controls Liquigas." (Pet.App.D p. 64)
>
> * * * *
>
> "The preponderance of the evidence shows that the Restatement of the tender offer fully informs the Ronson stockholders of the material fact without omission or misrepresentation. The Restatement adequately discloses the persons behind and the methods used to fund the offer, the effect of foreign laws on the offer, and the federal administrative legal problems involved in the offer." (Pet.App. D p. 77)

For other specific findings that the evidence supported Liquifin's position see Pet. App. D pp. 61, 67, 69, 70, 72, 75, and 76.

Thus the outcome in the Court below was not affected by the allocation of burden of proof, and there is no issue of law on burden of proof warranting review by this Court.

4. This Case Presents No Williams Act Issue Which Requires This Court's Attention

The only other question Ronson points to in attempting to justify its request for certiorari is its claim that amendments of a tender offer *ipso facto* necessitate permanent injunctive relief. This argument rests entirely upon a *dictum* in *Corenco Corp.* v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973), in which the Second Circuit noted that, in some future case, a set of facts might exist which might justify considering an argument that repeated, willful non-disclosures call for the grant of an injunction for a short period, as a punitive measure. *Id.* at 214.* No court has ever granted such relief.

In fact, all of the courts, including the Second Circuit, which have considered the type of relief appropriate in Williams Act cases have agreed that the proper course is to allow a tender offer to proceed after the material facts have been disclosed. *See, e.g., Missouri Portland Cement Co.* v. *Cargill, Inc.*, CCH TRADE REG. REP. ¶ 75,113, at 96,964 (2d Cir. 1974); *Corenco Corp.* v. *Schiavone & Sons, Inc.*, 488 F.2d 207 (2d Cir. 1973); *Sonesta Int'l Hotels Corp.* v. *Wellington Assoc.*, 483 F.2d 247 (2d Cir. 1973); *Butler Aviation Int'l Inc.* v. *Comprehensive Designers, Inc.*, 425 F.2d 842 (2d Cir. 1970); *Electronic Specialty Co.* v. *International Controls Corp.*, 409 F.2d 937 (2d Cir. 1969); *Nicholson File Co.* v. *H. K. Porter Co.*, 341 F. Supp. 508 (D.R.I. 1972). This type of relief, patterned on Second Circuit decisions, was adopted by the District Court and

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* Since there was no evidence of wilful non-disclosure in the present case, since the result of the preliminary injunction herein was to hold up the tender offer for almost eight months, and since the tender offer has now been completed and shareholders have already sold their shares on the basis of a Restated Offer to Purchase found to be fully fair and accurate, this case clearly does not present the type of hypothetical situation envisioned in the *Corenco* dictum as possibly calling for some delay of the tender offer as a punitive measure.

the Court of Appeals in the present case. *Ronson Corp.* v. *Liquifin A.G.*, 483 F.2d 846 (3d Cir. 1973), *on remand* 370 F. Supp. 597 (D.N.J.), *aff'd*, 493 F.2d 1401 (3d Cir. 1974), *rehearing en banc denied*, No. 74-1085 (3d Cir., May 7, 1974).

Furthermore, injunctive relief lies within the sound discretion of a district court. Here the District Court's exercise of its discretion was unanimously affirmed by the Court of Appeals. In fact, the argument Ronson now makes was considered and rejected by both Courts after full review of the comprehensive record before them.

There are no facts stated in the Petition which justify a conclusion that the Court of Appeals was wrong and that the District Court abused its discretion; indeed, no such facts exist. Certainly this Ronson contention is not a major issue justifying review by this Court.

CONCLUSION

For the foregoing reasons, Ronson's Petition for a Writ of Certiorari should be denied.

Dated: September 4, 1974

Respectfully submitted,

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